

APPENDIX

[SEAL]

OFFICE OF THE SOLICITOR GENERAL

Washington, D.C. 20530

February 21, 1975

Edward S. Irons, Esq.

Irons & Sears

1801 K Street, N.W.

Washington, D.C. 20006

Re: Butterfield, et al. v. Robertson, et al.
(No. 74-450)

Dear Mr. Irons:

As requested in your letter of February 19, 1975,
I consent to the filing of a brief *amicus curiae* in the
above case on behalf of Mary Helen Sears.

Sincerely,

/s/ Robert H. Bork
Robert H. Bork
Solicitor General

ALAN B. MORRISON

ATTORNEY AT LAW

2000 P Street, N.W., Suite 700
Washington, D.C. 20036

(202) 785-3704

February 21, 1975

Edward S. Irons
Irons & Sears
1801 K Street, N.W.
Washington, D.C. 20006

RE: Butterfield, et al. v. Robertson, et al
No. 74-450

Dear Mr. Irons:

On behalf of the respondents in the above action, I hereby consent to the filing of a brief *amicus curiae* in behalf of Mary Helen Sears in Case No. 74-584.

Sincerely,

/s/ Alan B. Morrison
Alan B. Morrison

ABM:pl

THE CONSTITUTION

ARTICLE 1

SECTION 8, CLAUSES 3 AND 8

The Congress shall have Power . . .

* * * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

* * * *

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

* * * *

ARTICLE VI, CLAUSE 2

* * * *

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * * *

STATUTES INVOLVED

The Freedom of Information Act, as amended, 5 U.S.C. 552, provides in pertinent part:

Section 552. *Public information; agency rules, opinions, orders, records, and proceedings.*

(a) Each agency shall make available to the public information as follows:

* * * *

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records available to any person.

* * * *

(b) This section does not apply to matters that are—

* * * *

(3) specifically exempted from disclosure by statute;

“(c) This section does not authorize withholding of information or limit the availability of records to the public, except as *specifically* stated in this section. This section is not authority to withhold information from Congress.”

The Patent Code, Title 35 § 102, (a) and (b) and 122 provides:

§ 102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

§ 103. Conditions for patentability; non-obvious
subject matter

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made. July 19, 1952, c. 950, § 1, 66 Stat. 798.

§ 122. Confidential status of applications

Applications for patents shall be kept in confidence by the Patent Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commissioner.

* * *

Section 1104 of the Federal Aviation Act of 1958, 72 Stat. 797, 49 U.S.C. 1504, provides:

Any person may make written objection to the public disclosure of information contained in any application, report, or document filed pursuant to the provisions of this chapter or of information obtained by the Board or the Administrator, pursuant to the provisions of this chapter, stating the grounds for such objection. Whenever such objection is made, the Board or Administrator shall order such information withheld from public disclosure when, in their judgment, a disclosure of such in-

formation would adversely affect the interests of such person and is not required in the interest of the public. The Board or Administrator shall be responsible for classified information in accordance with appropriate law: *Provided*, That nothing in this section shall authorize the withholding of information by the Board or Administrator from the duly authorized committees of the Congress.

EXCERPT FROM SENATOR LONG'S STATEMENT
Re S. 1666

Senator Long stated:

"Section 3(c) contains the portion of the bill which has been most extensively revised. It requires that all agencies' records be made promptly available except in cases where such records are: (1) *specifically covered by a statutory exemption, as in the case of individual income tax returns*; [See 26 U.S.C. 6103]

* * * *

Section 3(e) of S. 1666 states that nothing in this section authorizes the withholding of information nor the limiting of public access to records except as specifically described in the measure. This is substantially the present 5 U.S.C. 22, but is written within the context of this more comprehensive bill. Statutes which curtail the availability of information to the public are not intended to be affected by the enactment of this bill. *They provide that specified records shall not be released unless authorized by law.* Subsection 3(e) is not such an authorization to disclosure. It should be made clear that this bill in no way limits statutes specifically written with the Congressional intent of curtailing the flow of information as a supplement necessary to the *proper functioning of certain agencies.*"

ASSOCIATED PORTION OF S. 1666

"(c) *Agency Records*.—Every agency shall, in accordance with published rules stating the time, place, and procedure to be followed, make its records promptly available except those particular records or parts thereof which are (1) *specifically exempt from disclosure by statute*; (2) specifically required by Executive order to be kept secret for the protection of the national defense; and (3) the internal memorandums of the members and employees of an agency relating to the consideration and disposition of adjudicatory and rulemaking matters. The district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency is situated shall have jurisdiction upon complaint to order the production of any agency records or information improperly withheld from the complainant by the agency and to assess against the agency the cost and reasonable attorneys' fees of the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action by a preponderance of the evidence.

* * * *

"(e) *Limitation of Exemption*.—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as *specifically* stated in this section, nor shall this section be authority to withhold information from Congress."